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Attorney for Plaintiff

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

THOMAS ZIRKIN, an Individual,

Plaintiffs,

vs.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, an Illinois
Corporation; and USAA GENERAL
INDEMNITY COMPANY, a Texas
Corporation

Defendants.

CASE NO.: 2:22-cv-01627-JCM-DJA

**STIPULATION AND ORDER
REGARDING FRCP 35 MEDICAL
EXAMINATION OF PLAINTIFF
THOMAS ZIRKIN**

IT IS HEREBY STIPULATED AND AGREED by and between State Farm Mutual Automobile Insurance Company, USAA General Indemnity Company (collectively “Defendants”) and the Plaintiff Thomas Zirkir (the “Plaintiff”), to the terms of the FRCP Rule 35 Examination of Plaintiff to be conducted by James Forage, M.D. (“Doctor”) as follows:

1. The scope of the examination is limited to the injuries Plaintiff alleges were caused by the subject accident and which are within the Doctor’s field of expertise.

2. No persons shall be present during the examination other than Plaintiff, the Doctor and members of the Doctor's staff.

3. The Doctor will treat Plaintiff with the same respect with which he treats his patients.

4. The Doctor will not require the Plaintiff to sign or fill out any document(s) that had not been provided to the Plaintiff's counsel at least three business days prior to the examination.

5. The Plaintiff will identify himself at the time of the examination by providing the Doctor with his valid ID.

6. During the examination, the Doctor will not conduct any invasive procedures, including, but not limited to incisions, injections, rectal examination, body fluids sampling, DNA sampling, MRI, X-Rays, hair sampling, etc.

7. The Doctor will retain all handwritten notes, e-mails sent and received, and all documents generated or received, including draft reports, related to the examination.

8. The Doctor will produce a copy of his entire file upon reasonable request by the Plaintiff's counsel, including any test materials or raw data.

9. The Doctor will not videotape or audiotape the Plaintiff, and Plaintiff will not videotape or audiotape the examination.

10. The Doctor will not discuss with the Plaintiff issues involving liability of the case. However, the Doctor is permitted to ask questions regarding his prior medical history and the cause of the Plaintiff's alleged injury in the forms that will be provided to Plaintiff's counsel prior to the Examination.

11. The Doctor will accurately report his findings and test results.

1 12. The Doctor acknowledges that his deposition may be taken in this case, and he
2 will cooperate with the scheduling of same and comply with any subpoena for documents.

3 13. The Doctor acknowledges that his testimony may be used to cross-examine him
4 in the future.

5 14. The examination will take place on March 31, 2023 at 1:30 p.m. at the Doctor's
6 office located at 8530 W. Sunset Road, #200, Las Vegas, Nevada 89113.

7 15. Plaintiff shall arrive ten (10) minutes earlier than the scheduled appointment time.

8 16. Defense counsel provided the Doctor with a copy of this Stipulation and Order.
9 The Doctor reviewed and agreed to the terms of this Stipulation and Order and authorized his
10 electronic signature below.

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17. Defendants and the Plaintiff have entered into this Stipulation and have requested that the Court issue and Order incorporating its terms.

DATED: March 21st, 2023.

HALL JAFFE & CLAYTON, LLP

/s/ RILEY A. CLAYTON

RILEY A. CLAYTON, ESQ.

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/s/ KELLY SMITH

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Attorney for Defendant USAA

General Indemnity Company

/s/ James S. Forage

James S. Forage, M.D.

ORDER

IT IS SO ORDERED.

DATED: March 22, 2023


UNITED STATES MAGISTRATE JUDGE